

The Educational Value of a Legal Aid Clinic*

SILAS A. HARRIS†

There can be no adequate appraisal of the educational value of legal aid clinics without an agreement as to the meaning of those terms. What is a legal aid clinic and what are values in legal education?

There are many types of legal aid clinics and many degrees of participation on the part of the law school. For the purpose of this discussion a legal aid clinic will be thought of as giving the maximum amount of attention to the work. It will be assumed that the clinic is operated primarily as a department of the law school, that its activities are under the direct supervision of a member of the faculty, and that law school credit is given for work done in the clinic. Can such an agency furnish anything of educational value or of sufficient value to justify the bother, expense, and sacrifice necessary to operate it?

A more difficult question arises when one attempts to set up a standard of values in legal education. For the purpose of this discussion it will be assumed that the primary purpose of the law school is the preparation of the student for the practice of the law, using that expression in its larger sense. It is further assumed that this preparation includes securing some information, acquiring certain skills, and developing certain attitudes. This may not mean very much because those words may be interpreted to include almost anything. But more meaning may later appear when some content is given to the terms—information, skills, and attitudes.

It is generally recognized that the informational part of legal training is the least important of the three elements men-

† Professor of Law, Ohio State University.

* Substance of an address given before the Round Table on Legal Aid Clinics at the meeting of the American Association of Law Schools, Dec. 31, 1936.

tioned. A law student is not primarily concerned with remembering some particular statement of a judge in a case or even some generalization made from a group of cases by a text writer or law professor. In other words, a law school is not teaching rules of law as the final goal of its instruction. Some informational matters are of importance but not of primary importance. Rather an emphasis is placed on the acquisition of that skill or technique which is generally called legal reasoning.

The informational value of legal aid is also of minor importance. This is often not appreciated, and many people think of a clinic as merely supplying that which has often been spoken of as a deficiency in law school training. Many former students return to the law school and explain how little they knew about journal entries and precipes when they left school. They usually have found out about those matters within a few days after leaving school and do not suffer from a lack of that knowledge during law school days. The knowledge of these and many other details of procedure can be usually secured by a few minutes conversation with a clerk of the court. Many lawyers with some years of practice are required to inform themselves of the details of matters of procedure when dealing with problems only occasionally encountered in their practice. So a law school should not feel obligated to inform the student of all the details of the practice.

This point should be emphasized because most people think a clinic is only concerned with superficial informational matters. A clinic is not established for the primary purpose of teaching the student how to draw journal entries or when and how to file precipes. Neither is it essential for the student to know which deputy or bailiff he should give a cigar to in order to get the best service around the court house. A class may very properly meet with court officials or practicing attorneys and secure matters of information about the practice but these matters do not justify the clinic's existence. They are only a part of a larger and more important program.

A clinic may be of value in developing skills which may be of service to the practicing attorney. Chief among these skills is the ability to properly draft pleading and other legal instruments. These skills may be acquired in a standard law course, but a higher degree of skill is required when the material comes to the student in the raw and the student must get the facts from a client and his witnesses. In this way the student is made to acquire a better understanding of the legal principles which he has studied in other courses, and the student must exercise some ingenuity to see how and where the legal principles will be helpful in solving his problem.

There are, however, certain skills and techniques which can be acquired in a clinic but which cannot be dealt with in other law school work. One of these deals with the method of conducting the interview. A student starts his clinical work with an interview. In his first case he may blunder along without much purpose. But after handling two or three cases he is in a position to analyze his own experience and determine what methods were used and how effective they were in accomplishing his purpose. The student at least becomes aware of the problem and can consciously acquire certain techniques before he encounters the situation in the pressure of his office practice. One thing the student early acquires in these interviews is the desirability of maintaining an objective attitude. He finds that if he too easily identifies his emotions and attitudes with those of his client he cannot properly help his client. He finds that his initial impression is not always supported by the final report after a case worker has investigated both sides. He finds that usually there are two sides to any controversy. This withholding of judgment will make the student a better advisor and usually impels him to secure a more complete statement of facts on the first interview.

Another skill which can be stressed in the clinic relates to the manner of reporting one's cases. A great many lawyers are greatly deficient in keeping an adequate record of the things

they do concerning their cases. In the clinic the director can bear down on this and almost make a hobby of memorandum writing and report making. The student should get the habit of making a record of everything he does in the case, every interview, every telephone conversation, or any other step taken in the progress of the case. If the case is being prepared for trial a complete statement of the witness should be made for the files. These are matters which a student will probably learn if he enters any large, well-regulated law office, but they are often neglected if the student does not have that opportunity. These habits cannot be acquired by lecture or discussion but only by the day by day handling of a real problem.

In addition to the acquisition of information and skills, it has been assumed that one object of the law school is the formation of certain attitudes. This is a major opportunity and responsibility of the law school. The school, whether conscious of it or not, puts its stamp upon the student which in a great measure determines his professional behavior. It is much better for the welfare of the profession if this influence is exerted deliberately. There is no better place than in the legal aid clinic for developing desirable professional attitudes.

The student can seldom acquire proper attitudes toward procedure in a regular pleading course. After reading many reported cases and seeing what some judges do about procedure, the student gets the idea, held by many lawyers, that it is all a bag of tricks—merely a set of rules to short circuit the case if possible. The lawyer usually is not disturbed at this practice because by it he wins as many cases as he loses. The litigant on the other hand does not look at it that way and a good deal of the disrespect of law and legal procedure comes from this attitude of treating litigation as a sporting matter. This criticism has been made many times before but not much has been done about it. Nothing permanently can be done as long as law schools turn out merely trained technicians. To effect any change is a large assignment. There is the chance that the clinic

will make the student all the more a procedural ferret. But it is also possible to create an attitude of irritation at anything less than a full and square hearing on the merits. Thus seeds of discontent with the present system may be sown which will reap a harvest of reform in due time.

In the legal aid clinic desirable attitudes can be developed in respect to the social aspects of the legal problem. We often speak of the socially minded lawyer or a sociological jurisprudence. These are meaningless words unless they represent specific attitudes of social interest. About fifty per cent of the cases handled by the clinic at Ohio State University deal with domestic relations. These cases usually involve social problems as distinguished from merely legal ones, although the tendency of most lawyers has been to treat these cases as ordinary suits at law.

After the student makes his first contact with the case and before he does anything with it, he refers it to a social agency for investigation. About sixty per cent of the cases referred are settled by the social agency or by a change of mind of the parties. Twenty per cent are rejected as not justifying free legal aid and twenty per cent are recommended for legal action. Throughout all this, the student has his attention directed to the social aspects of the case.

In dealing with the social agencies in these cases the student will acquire an understanding and appreciation of the work and point of view of an experienced social worker. This is important as the lawyer and social worker must work together in solving their problems, and too often each has failed to understand the point of view of the other. These attitudes of cooperation can have their beginnings in a legal aid clinic.

A greater cooperation with other branches of the university has been long advocated for the reason that it will tend to broaden the point of view and attitudes of the student. A legal aid clinic furnishes a good opportunity for cooperation between law students and students of the school of social administration.

The records of the clinical cases can be made the basis of study by the students of both schools, and then after a conference there can be an exchange of point of view. This work should be effective in further securing a better understanding between lawyers and social workers.

Another decided educational advantage of the legal aid clinic is the opportunity it affords to deal with attitudes of professional behavior. Frequently there arises one of those delicate situations involving professional ethics. A discussion of that situation by the students and the adoption of a course of conduct is the most effective training in that important field.

It should not be overlooked that the clinic is also a social agency. A legal aid clinic has a double purpose. It is a clinic for the students and it is a legal aid agency for furnishing service to indigent persons. The student approaches his first professional tasks with an attitude of willingness to serve his client, and in his work with lawyers, who are donating their services, he realizes that this desire to serve is one of the attributes of the profession. The law school and the entire profession are raised in public esteem when attention is directed to the willingness of the legal profession to be of service to the indigent litigant.

The legal aid clinic cannot correct all the ills of professional behavior, and much of the idealism of the class room may disappear when the young lawyer faces the harsh realities of his practice. But that should not discredit the clinic when it is better able to deal with these important problems than any other agency in the law school.

The clinical plan seems to be based upon sound educational policy as it deals with realities and with problems in their entirety. Occasionally one hears criticism of medical education that an emphasis upon the study of diseases in the abstract will so warp the point of view of the physician that he will treat the disease and not the patient. In a similar way there is a tendency in legal education to over-emphasize abstract principles in an

attempt to systematize the law, which may have little significance outside the class room. Such emphasis tends to overlook some of the other factors which are involved in treating the problem of a client in its entirety. The student in the clinic is not called upon to answer an isolated question in contracts or domestic relations but is asked to solve a human problem. This requires a synthesis not only of all the law studied in the law school but also permits bringing into the solution the psychological, social, and practical factors that bear upon the problem. This may be said to be a synthetic approach to the legal problem as distinguished from certain more narrow approaches heretofore emphasized in law school work.

Frequently all higher education has been criticized for teaching by the absorption method. Students have been treated like sponges and learning is poured into them past the saturation point. Legal educators have been somewhat guilty of this fault. A vast amount of legal lore is poured into these young people. A few mental tricks are taught for matching up cases to fit certain generalizations and to distinguish other cases or to modify the generalization. This is sort of a boon doggling process and to little purpose except to prepare for an examination. The student chafes under this monotony and senses the unreality of the process. An attempt is made to keep the interest by inserting other activities in the curriculum such as seminar work, law review writing, research on legal problems, etc. A better answer to the problem is to furnish more clinical instruction. The student puts his energies into a real case and under proper guidance grows in his capacity to cope with problems of his client. A new meaning, and interest is thereby given to all his work.

A legal aid clinic furnishes ample opportunities for sound legal education. If the training of the clinic is of no educational value, the agency is not measuring up to its full possibilities.